

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN AL BISHOP**, on March 5, 2001 at 3:00 P.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Al Bishop, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Chris Christiaens (D)  
Sen. Bob DePratu (R)  
Sen. Eve Franklin (D)  
Sen. Don Hargrove (R)  
Sen. Dan Harrington (D)  
Sen. Royal Johnson (R)  
Sen. Jerry O'Neil (R)  
Sen. Emily Stonington (D)

**Members Excused:** Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Jeanne Forrester, Committee Secretary  
Susan Fox, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 279, 2/20/2001; HB 175,  
2/20/2001; HB 458, 2/22/2001;  
HJ 9, 2/22/2001  
Executive Action: HB 175; HB 458; HJ 9

#### **HEARING ON HB 279**

**Sponsor:** REP. JOE MCKENNEY, HD 49, GREAT FALLS

**Proponents:** Steve Meloy, Department of Commerce

Ward Shanahan, MERCK-MEDCO  
Tony Fisher, Board of Pharmacy  
Shirley Baumgartner, Board of Pharmacy  
Lori Morin, Montana Pharmaceutical Association  
Tim Stratton, Montana Pharmaceutical Association  
Randy Kuiper, Montana Society of Health System  
Pharmacists  
Peg Brownlee, University of Montana  
Julie Brown, University of Montana  
Jim Smith, Montana State Pharmaceutical Association  
DeeDee Cress, Pharmacy Practitioner  
Dennis Iverson, Pharmaceutical Research and  
Manufacturers of America  
John Flink, Montana Hospital Association  
Tom Ebzery, St. Vincent's Hospital  
Jani McCall, Deaconess Billings Clinic  
Sami Butler, Montana Nurses Association  
Jerry Loendorf, Montana Medical Association

Opponents: None

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, GREAT FALLS opened for REP. JOE MCKENNEY, HD 49, GREAT FALLS. REP. MCKENNEY was still in session in the House of Representatives. SEN. CHRISTIAENS introduced HB 279. He said this is an act revising the practice of pharmacy. It will clarify the number of terms a member of the Board of Pharmacy may serve. It will also provide for registration to practice telepharmacy.

Proponents' Testimony:

Steve Meloy, Department of Commerce submitted a copy of his testimony **EXHIBIT**(phs50a01).

Ward Shanahan, MERCK-MEDCO passed out a copy of proposed amendments **EXHIBIT**(phs50a02). He also passed out a copy of the current law **EXHIBIT**(phs50a03).

REP. JOE MCKENNEY arrived for the hearing and he explained he had just got out of the house session. He said he would reserve his remarks until closing.

Tony Fisher, Board of Pharmacy passed out a copy of his testimony **EXHIBIT**(phs50a04). He said the Board of Pharmacy does not support the amendments as written.

**Shirley Baumgartner, Board of Pharmacy** submitted a copy of her testimony **EXHIBIT**(phs50a05) .

**Lori Morin, Montana Pharmaceutical Association** submitted a copy of her testimony **EXHIBIT**(phs50a06) . She said she was opposed to the amendments. She also passed out letters from **Dave Forbes EXHIBIT**(phs50a07) and **Donna Beall EXHIBIT**(phs50a08) .

**Tim Stratton, Montana Pharmaceutical Association** presented a copy of his testimony **EXHIBIT**(phs50a09) .

**Randy Kuiper, Montana Society of Health System Pharmacists** passed out a copy of his testimony **EXHIBIT**(phs50a10) .

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**Peg Brownlee, University of Montana** passed out a copy of her testimony **EXHIBIT**(phs50a11) .

**Julie Brown, University of Montana** said she was a third year pharmacy student. She said this act will allow pharmacists to continue to provide good service.

**Jim Smith, Montana State Pharmaceutical Association** said they stand in support of this bill. He said he had been working on this bill with the pharmacists for the past four years. He also said he was not comfortable with the amendments.

**DeeDee Cress, Pharmacy Practitioner** said she was for the new definitions in the law; but she was opposed to the amendments.

**Dennis Iverson, Pharmaceutical Research and Manufacturers of America** said they are in support of this bill.

**John Flink, Montana Hospital Association** said he was in support of this bill.

**Tom Ebzery, St. Vincent's Hospital** was in support of this bill.

**Jani McCall, Deaconess Billings Clinic** said she was in support of this bill.

**Sami Butler, Montana Nurses Association** said they worked with the pharmacists on this bill and they were in support of this bill.

**Jerry Loendorf, Montana Medical Association** said they also support this bill.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. JOHNSON** asked if the amendments you are suggesting are going to be detrimental to the pharmacists' practice. **Mr. Shanahan** said he did not see them as being detrimental to their practice. He said what they were trying to do is make sure they were not detrimental to their own practice.

**SEN. JOHNSON** asked what was the problem with this bill? **Ms. Morin** said the utilization plan in the State of Montana does not define the ratio. It only defines how the technicians are trained and utilized. She said they want to make sure if the out of state mail service does not have a ratio, they would use the ratio of this state.

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**SEN. JOHNSON** asked if he spent the winters in Arizona, would he be able to get his prescriptions there. **Ms. Morin** said the Montana laws would have no effect on having his prescriptions filled in Arizona.

**SEN. CHRISTIAENS** said the number of technicians that could be supervised by a pharmacist came into play in 1993. He wondered how would this effect mail order pharmacies. **Ms. Morin** said mail service pharmacies should comply with the technicians' ratio in each state, if there is one in that state. If the state does not have a technician ratio, it falls back to Montana's ratio. She also said she would like the utilization plan to allow for variation between setting.

**SEN. CHRISTIAENS** said he did not see it in writing what was required by the utilization review. **Ms. Morin** said there is a technician training manual.

**SEN. CHRISTIAENS** asked how would telepharmacy be regulated. **Ms. Morin** said telepharmacy is a very new idea. The National Association of the Board of Pharmacies have looked into regulating telepharmacies, since they cross so many state lines. So far, they have developed a program to try and verify those provider services.

**SEN. CHRISTIAENS** asked where would he go if he had a problem with telepharmacy. **Ms. Morin** said that if you had a problem with a service provider that came from out of state, you must go back to that state.

**SEN. GRIMES** asked if drug therapy management could be explained. **Ms. Morin** said if you have hypertension, the physician would start you out on two medications. Next, the physician and the pharmacist would have a collaborative drug therapy agreement, which would allow the pharmacist to provide your medication and do your ongoing monitoring. She added this is not in the current scope of practice.

**SEN. GRIMES** said that would clearly put your pharmacist in a more liable situation.

**SEN. GRIMES** asked what would happen if the pharmacist and the physician had a difference of opinion. **Ms. Morin** said it would all be spelled out in protocol and the pharmacist would not do anything the physician did not give him the authority to do.

**SEN. GRIMES** asked what is a bill of rights. **Ms. Morin** said a bill of rights is a very common term in health care. It is the expectation of what a patient should receive. It is also the standard of care of what a patient should expect.

**SEN. STONINGTON** asked if when you call the 800 number - that physical location may not be the actual location from where the drugs are being dispensed. **Mr. Shanahan** said yes, it may not be the place where the drugs are shipped from.

**SEN. STONINGTON** asked if the pharmacist, who takes your order, may not be the person who fills your order. **Mr. Shanahan** said that is correct. The person who took your order may not be the person who fills your order.

**SEN. DEPRATU** asked why the word "verbal" was taken out of line 6, page 6. **Mr. Fisher** said he was not sure it should be removed, because the piece of paper in a person's prescription package is not patient counseling. He said face to face communication is the best way, then you are able to see body language etc.

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**Closing by Sponsor:**

**REP. JOE MCKENNY** thanked the committee for a good hearing. He said as far as he was concerned the word "verbal" could be put back into the bill. He once again apologized that he missed his

opening. He said the last major update of the pharmacy codes was in 1980, things have changed in 20 years. In the 1990's alone, more than 400 new drugs have been approved by the FDA. He asked the committee for a do pass on the bill.

**HEARING ON HB 175**

**Sponsor:** REP. LARRY JENT, HD 29, BOZEMAN

**Proponents:** Pam Bucy, Department of Justice  
Gary Dale, Department of Justice

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. LARRY JENT, HD 29, BOZEMAN** introduced HB 175. He said this bill is an act allowing for the disclosure of confidential health care information without a patient's authorization to the state medical examiner or the county coroner.

**Proponents' Testimony:**

**Pam Bucy, Department of Justice** said in 1987 the Montana Legislature passed the Health Care Information Act. Under this act, if the coroner operated out of the sheriff's department they are able to obtain information. However, there are a few coroners' offices that do not operate within another department and they are not able to obtain information. This is a housekeeping bill for those offices, it would amend the section of law to include county coroners and medical examiners.

**Gary Dale, Department of Justice** said he is the state medical examiner and he looked at this bill as a housekeeping effort.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**REP. JENT** thanked the committee for a good hearing. He hoped the committee would pass this bill.

**EXECUTIVE ACTION ON HB 175**

**Motion/Vote:** SEN. JOHNSON moved that HB 175 BE CONCURRED IN.  
Motion carried 10-0.

SEN. FRANKLIN will carry this bill in the Senate.

**HEARING ON HB 458**

**Sponsor:** REP. DEBBY BARRETT, HD 34, DILLON

**Proponents:** Lawrence McElloy, Board of Medical Examiners  
Tanya Ask, BlueCross BlueShield  
Jim Ahrens, Montana Hospital Association  
Susan Good, Allied Citizens for Health Care Equity  
Jerry Loendorf, Montana Medical Association

**Opponents:** None

**Opening Statement by Sponsor:**

REP. DEBBY BARRETT, HD 34, DILLON introduced HB 458. She said this is a bill to require managed care organizations employ or contract with a licensed physician to serve as a medical director. This is something the Board of Medical Examiners have wanted to do since 1996.

**Proponents' Testimony:**

Lawrence McElloy, Board of Medical Examiners said he felt very strongly that a medical director of a managed care organization should be a physician licensed by the State of Montana. He submitted a letter from Dr. James Bonnet **EXHIBIT (phs50a12)**.

Tanya Ask, BlueCross BlueShield said they have three managed care organizations that would fall under this bill. All three of them have medical directors who are licensed to practice in the State of Montana.

Jim Ahrens, Montana Hospital Association said they supported this bill.

Susan Good, Allied Citizens for Health Care Equity said while they stand in support of this bill, they felt it does not go far enough. She said that actual medical personnel should be in charge of making medical decisions for people who are involved in managed care.

**Jerry Loendorf, Montana Medical Association** said this bill provided good business practice.

Opponents' Testimony: None

Questions from Committee Members and Responses:

**SEN. JOHNSON** asked if she knew of any managed care organizations that did not have a licensed physician as a medical director.

**Ms. Ask** said she was not aware of any managed care organizations that did not have a licensed physician as a medical director.

**Mr. Ahrens** said he was not aware of any managed care organization that did not have a licensed physician as a medical director.

**Ms. Good** said she was not aware of any managed care organization that did not have a licensed physician as a medical director.

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**SEN. JOHNSON** said he did not know why we needed this bill.

Closing by Sponsor:

**REP. BARRETT** said since 1996, the Board of Medical Examiners had wanted to do make this change. She said this bill will protect the people of Montana in the future.

EXECUTIVE ACTION ON HB 458

Motion/Vote: **SEN. CHRISTIAENS** moved **HB 458**. Motion carried 7-2 with Johnson and O'Neil voting no.

**SEN. CHRISTIAENS** will carry this bill in the Senate.

HEARING ON HJ 9

Sponsor: **REP. MONICA LINDEEN, HD 7, HUNTLEY**

Proponents: **Bill Martin, Columbus**  
**John Flink, Montana Hospital Association**  
**Tom Ebzery. St. Vincent's Hospital**

Opponents: None

Opening Statement by Sponsor:



**REP. MONICA LINDEEN, HD 7, HUNTLEY** introduced HJ 9. She said this is a joint resolution of the Senate and the House of Representatives of the State of Montana urging Congress to bring equitable funding of health care services and benefits to all Medicare recipients, regardless of where they live.

**Proponents' Testimony:**

**Bill Martin, Columbus** said he was the Stillwater County representative for the Legacy Legislature. He said he signed up his parents up for the Gold Choice Program that was sponsored by St. Vincent's Hospital. The Gold Choice Program went out of business because of the way it was reimbursed by Medicare. The formula used, allowed areas with a larger population to receive larger reimbursements.

**John Flink, Montana Hospital Association** said this is an issue of fairness. The way the formula is designed, there are no HMO's in Montana, who provide this kind of option for seniors. He said he would encourage the committee to adopt this resolution.

**Tom Ebzery. St. Vincent's Hospital** said they were 50 percent owner with BlueCross BlueShield in the Yellowstone Community Health Plan (Gold Choice). They had to end the program and had many disappointed people. This resolution is a step in the right direction.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. HARGROVE** asked why is there such inequity in the managed care organizations. **Mr. Flink** said the payment system for the managed care organizations which provide services to Medicare, are based on a fee for service system. The way it works is a Medicare agency adds up the cost for serving Medicare beneficiaries in a certain area, then it is divided by the number of people served. This is how they arrive at a per person cost.

**SEN. HARGROVE** said he hated to say this, but it sounded like a fair system.

**Closing by Sponsor:**

**REP. LINDEEN** thanked the committee for a good hearing. She passed out a copy of the suit filed by the Minnesota Attorney General **EXHIBIT (phs50a13)**. She wanted the committee to note that Montana is not the only state that has this problem.

**EXECUTIVE ACTION ON HJ 9**

**Motion/Vote:** SEN. HARRINGTON moved that HJ 9 BE CONCURRED IN.  
Motion carried 8-1 with Johnson voting no.

**ADJOURNMENT**

Adjournment: 5:30 P.M.

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SEN. AL BISHOP, Chairman

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JEANNE FORRESTER, Secretary

AB/JF

**EXHIBIT** (phs50aad)